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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/007,869	11/08/2001	Stewart Paton Granger	J6666(C)	6511

201 7590 12/27/2002

UNILEVER
PATENT DEPARTMENT
45 RIVER ROAD
EDGEWATER, NJ 07020

EXAMINER

JIANG, SHAOJIA A

ART UNIT PAPER NUMBER

1617

DATE MAILED: 12/27/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Applicati n N .

10/007,869

Applicant(s)

GRANGER ET AL.

Examin r

Shaojia A. Jiang

Art Unit

1617

--The MAILING DATE of this c mmunication appears n the cover she t with the correspondence address --

THE REPLY FILED 31 October 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

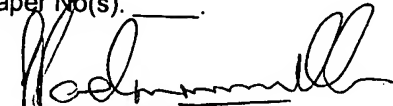
NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See attachment.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.Claim(s) objected to: none.Claim(s) rejected: 1-15.Claim(s) withdrawn from consideration: none.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
10. ☐ Other: _____


SREENI PADMANABHAN
PRIMARY EXAMINER

12/26/02
Part of Paper No. 6

Advisory Action

This Office Action is a response to Applicant's amendment and response after FINAL filed on October 31, 2002.

5. Applicant's remarks filed October 31, 2002 regarding the rejection of claims 1-15 made under 35 U.S.C. 112, first paragraph for lack of scope of enablement have been fully considered but are unpersuasive for reasons of record in the Final Office Action September 10, 2002.

As discussed in the Final Office Action, there is no common feature among these named exemplifying compounds in the Tables B1-B5, which represents a wide spectrum of compounds. How would the skilled artisan be able to ascertain that a certain compound is a retinoid booster, absent undue experimentation.

Applicant's remarks filed October 31, 2002 regarding the rejection of claims 1-15 made under 35 U.S.C. 112, second paragraph for indefinite expressions have been fully considered but are unpersuasive for reasons of record in the Final Office Action September 10, 2002.

Applicant's remarks filed October 31, 2002 with respect to the rejection of claims 1-15 made under 35 U.S.C. 103(a) as being unpatentable over Suares et al. (5,914,116) in view of Lie et al. (5,976,555) have been fully considered but are unpersuasive for reasons of record stated in the Final Office Action dated September 10, 2002.

Applicant's arguments that the cited prior art does not arrive the claimed invention herein have been considered but are not found persuasive. It is noted that Applicant admits that "although dual purpose single formulation cosmetic products have been developed in the cited art, only in hindsight, with the benefit of the disclosure of the present invention..". Applicant is requested to note that it is well settled that "intended use" of a composition or product, e.g., stable cosmetic composition, will not further limit claims drawn to a composition or product. See, e.g., *Ex parte Masham*, 2 USPQ2d 1647 (1987) and *In re Hack* 114, USPQ 161.

Moreover, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. *In re McLaughlin*, 170 USPQ 209 (CCPA 1971). See MPEP 2145. In the instant case, as discussed in the Final Office Action, the instant types of containers are widely used in order to preserve the stability of pharmaceutical/cosmetic products.


Therefore, motivation to combine the teachings of the prior art to make the present invention is seen and no impermissible hindsight is seen. The claimed invention is clearly obvious in view of the prior art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Jiang, whose telephone number is (703) 305-1008. The examiner can normally be reached on Monday-Friday from 9:00 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan, Ph.D., can be reached on (703) 305-1877. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-1235.

Shaojia A. Jiang, Ph.D.
Patent Examiner, AU 1617
December 26, 2002


SREENI PADMANABHAN
PRIMARY EXAMINER 12/26/02